[redacted]

[redacted]

CLARA PERET, OWNER OF THE CANAL-BOAT
W. PASSMORE, PLAINTIFF IN ERROR,

v.

CORNELIUS L. HAINES.

IN ERROR TO THE SUPREME COURT OF THE STATE OF [redacted]

[redacted]

(18,197.)

(18,337.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1902.

No. 201.

CLARA PERRY, OWNER OF THE CANAL-BOAT "ROBERT W. PARSONS," PLAINTIFF IN ERROR,

vs.

CORNELIUS L. HAINES.

IN ERROR TO THE SUPREME COURT OF THE STATE OF NEW YORK.

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1 Supreme Court.

In the Matter of the Application of CORNELIUS L. HAINES to Enforce a Lien against the Canal-boat "ROB'T W. PARSONS."

To a justice of the supreme court of the State of New York, eighth judicial district:

The petition of Cornelius L. Haines, of the village of Middleport, county of Niagara, and State of New York, respectfully shows:

That your petitioner from the 9th day of May, 1899, to and including the 17th day of May, 1899, at the place of business of your petitioner in the village of Middleport, Niagara county, N. Y., at the special instance and request of Levi Perry, the captain and master of said canal-boat called "Rob't W. Parsons," which was at that time navigating on the Erie canal in the State of New York, furnished to said canal-boat or vessel, materials, supplies, articles, provisions and stores, as follows, to wit:

	Docking	$2.00
May	9. 6 hours' labor	1.50
"	10. 5 hours' labor	1.25
"	11. 18 hours' labor	4.50
"	12. 57 hours' labor	14.25
"	127 ft. oak	6.35
"	184 ft. pine	5.52
"	7 lbs. spike	.35
"	2 lbs. oakum	.40

2

"	25 lbs. iron	1.25
"	14 bolts, ⅝ x 10	1.40
"	1 lb. nuts	.10
"	13. 51 hours' labor	12.75
"	64 ft. oak	3.20
"	12 lbs. spike	.60
"	1 lb. oakum	.20
"	4 lbs. washers	.40
"	18 bolts, ½ x 12	1.80
"	15. 1 hour sawing and planing	1.00
"	15. 2 hours' sawing and planing	2.00
"	78 hours' labor	19.50
"	272 ft. oak	13.50
"	42 ft. pine	1.26
"	58 lbs. spike	2.90
"	8 lbs. oakum	1.60
"	4 lbs. cotton	.60
"	6 bolts, ⅝ x 6	.24
"	16. 68 hours' labor	17.00
"	32 ft. oak	1.60
"	50 lbs. spike	2.50

"		6 ft. pine	.18
"		8 lbs. oakum	1.60
"		5 lbs. cotton	1.00
"	17.	45 hours' labor	10.75
"		6 wood screws, $\frac{3}{8}$ x 8	.30
"		38 lbs. spike	1.90
"		1 lb. oakum	.20
"		2½ gal. paint	2.55
"		3 hours' forging	1.20
"		240 lbs. iron	12.00
"		9 bolts, $\frac{3}{8}$ x 12	.90
			$154.40

3 Your petitioner further shows that the person who contracted said debt was one Levi Perry, who was at that time captain and master of said canal-boat, and that the owner of said canal-boat is Mrs. Levi Perry.

Your petitioner further shows that no assignment or transfer of said debt has been made by Cornelius L. Haines, and that he is now the owner and holder thereof.

Your petitioner further shows that on the 29th day of May, 1899, your petitioner caused to be drawn up and executed specifications of lien against said canal-boat or vessel for the amount and items claimed as above set forth, which specifications consisted of a bill of particulars of said claim or demand of petitioner, and a statement of the amount claimed to be due from said vessel, the correctness of which was sworn to by your petitioner, Cornelius L. Haines, and which said specifications were on the 29th day of May, 1899, and within thirty days after said debt was contracted as above set forth, filed in the office of the clerk of the county of Niagara, that being the county in which said debt was contracted, and that immediately thereafter and on the 31st day of May, 1899, your petitioner caused a copy of said specifications, duly certified by the county clerk of Niagara county, N. Y., to be filed in the office of the comptroller of the State of New York, in the bureau of canal affairs at Albany, N. Y. That a copy of said specifications is hereunto annexed marked Exhibit A, and is hereby referred to and made a part of this petition.

And your petitioner further shows that twelve months have not expired since said debt was contracted.

4 Your petitioner further shows that there is due and owing to your petitioner by reason of the foregoing facts the sum of $154.40, the amount for which said lien was filed, less the sum of $90.10 paid to apply thereon, with interest from the 29th day of May, 1899, to wit: the sum of $64.30, with interest from May 29, 1899, and the same is claimed by your petitioner and is justly due your petitioner over and above all payments and just deductions.

Wherefore your petitioner prays that a warrant may be issued to the sheriff of any county to enforce said lien of your petitioner as

above set forth, and to collect the amount thereof pursuant to the provisions of the statute in such case made and provided.

Dated, November, 1899.

C. L. HAINES, *Petitioner.*

STATE OF NEW YORK, } ss:
County of Niagara, }

Cornelius L. Haines, being duly sworn, says he is the petitioner named in and who subscribed the foregoing petition; that he has heard the same read and knows its contents, and that the same is true to the knowledge of deponent except as to those matters therein stated to be alleged on information and belief, and as to those matters he believes it to be true.

C. L. HAINES.

Sworn to before me this 6th day of November, 1899.

ANNA I. PHILLIPS,
Notary Public.

5

MIDDLEPORT, N. Y., *May* 17, 1899.

Boat Rob't W. Parsons, New York, to Middleport dry docks, Dr.

C. L. Haines, prop.

	Docking	$2.00
May	9. 6 hours' labor	1.50
"	10. 5 hours' labor	1.25
"	11. 18 hours' labor	4.50
"	12. 57 hours' labor	14.25
"	127 ft. oak	6.35
"	184 ft. pine	5.52
"	7 lbs. spike	.35
"	2 lbs. oakum	.40
"	25 lbs. iron	1.25
"	14 bolts, $\frac{5}{8}$ x 10	1.40
"	1 lb. nuts	.10
"	13. 51 hours' labor	12.75
"	64 ft. oak	3.20
"	12 lbs. spike	.60
"	1 lb. oakum	.20
"	4 lbs. washers	.40
"	18 bolts, $\frac{1}{2}$ x 12	1.80
"	15. 1 hour sawing and planing	1.00
"	15. 2 hours' sawing and planing	2.00
"	78 hours' labor	19.50
"	272 ft. oak	13.50
"	42 ft. pine	1.26
"	58 lbs. spike	2.90
"	8 lbs. oakum	1.60
"	4 lbs. cotton	.60
"	6 bolts, $\frac{3}{8}$ x 6	.24

6

" 16.	68 hours' labor	17.00
"	32 ft. oak	1.60
"	50 lbs. spike	2.50
"	6 ft. pine	.18
"	8 lbs. oakum	1.60
"	5 lbs. cotton	1.00
" 17.	45 hours' labor	10.75
"	6 wood screws, $\frac{5}{8}$ x 8	.30
"	38 lbs. spike	1.90
"	1 lb. oakum	.20
"	2½ gal. paint	2.55
"	3 hours' forging	1.20
"	240 lbs. iron	12.00
"	9 bolts, $\frac{5}{8}$ x 12	.90
		$154.40

Specifications of the lien of Cornelius L. Haines, of the village of Middleport, county of Niagara, State of New York, upon the canal-boat or vessel called the "Rob't W. Parsons," of New York, running and navigating upon the Erie canal and other inland waters of the State of New York.

That, as petitioner is informed and believes, the owner of said boat is one Mrs. Levi Perry, whose residence is at St. Johnsville, N. Y.

At the several and respective dates specified in the annexed written account, the undersigned at the village of Middleport, county of Niagara, State of New York, at the request of Capt. Levi Perry, the captain and master of said canal-boat or vessel called the "Rob't W.
7 Parsons," performed the work and services upon said canal-boat or vessel, and furnished to said canal-boat or vessel the materials, supplies, articles, provisions and stores which are respectively described in said account and are in said account charged at said dates respectively. And when said work and services were respectively done and performed, and when said materials, supplies, articles, provisions and stores were respectively furnished and delivered, the same and every part thereof were respectively fit and proper for the use of said canal-boat or vessel for and toward the repairing, fitting, furnishing, equipping and running said canal-boat or vessel, and were respectively worth the price charged therefor, respectively, in said annexed account, and there is now due and unpaid to the undersigned therefor the sum of one hundred and fifty-four dollars and forty cents over and above all payments, set-offs, discounts and counter-claims, for which sums the undersigned by reason of the premises and of the statutes in such case made and provided, claims to have a lien upon said canal-boat or vessel. Said annexed account forms a part of the specifications.

Dated, Middleport, N. Y., May 29, 1899.

CORNELIUS L. HAINES.

STATE OF NEW YORK, } ss:
County of Niagara, }

Cornelius L. Haines, being sworn, says that he resides in the village of Middleport, Niagara county, N. Y., and is the person named in the foregoing specifications, and all, each and every of the statements above and in the written account hereto annexed contained, are true and correct; and said specifications, and
8 the within account thereto annexed which forms part of the specifications, are correct and true.

CORNELIUS L. HAINES.

Sworn before me this 29th day of May, 1899.

ANNA I. PHILLIPS,
Notary Public.

9 Supreme Court.

In the Matter of the Application of CORNELIUS L. HAINES to Enforce a Lien against the Canal-boat "ROB'T W. PARSONS."

Whereas, the above-named applicant, Cornelius L. Haines, has applied to a justice of the supreme court, having jurisdiction, for a warrant to enforce a lien of said applicant upon the canal-boat or vessel called the "Rob't W. Parsons," navigating upon the Erie canal, to collect the amount of his claim against the said canal-boat or vessel which is a lien thereupon as aforesaid.

Now therefore, we Cornelius L. Haines as principal, and James M. Odell as surety, all of the village of Middleport, county of Niagara, and State of New York, do hereby undertake jointly and severally, pursuant to the statute in such case made and provided, that if the said applicant, Cornelius L. Haines, does not within three months after the delivery thereof prosecute any bond that may be given upon the discharge of said warrant, or if the said applicant be finally adjudged in any action brought upon said bond not to have been entitled to such warrant, we will pay all costs that may be awarded against said applicant, Cornelius L. Haines, not exceeding the sum of $100.00, and also all damages that may be caused by the seizure of said vessel under such warrant not exceeding the sum of $50.00.

C. L. HAINES. [SEAL.]
J. M. ODELL. [SEAL.]

10 STATE OF NEW YORK, } ss:
County of Niagara, }

On this 7th day of November, 1899, before me the subscriber, personally appeared Cornelius L. Haines and James M. Odell, to me personally known to be the same persons described in, and who executed the foregoing instrument and they severally duly acknowledged to me that they executed the same.

ANNA I. PHILLIPS,
Notary Public.

STATE OF NEW YORK, } ss.:
County of Niagara, }

James M. Odell, being duly sworn, says he is a resident of and freeholder within the State of New York, and is worth the sum of five hundred dollars, over and above all debts or liabilities which he owes or has incurred and exclusive of property exempt from levy and sale on execution.

J. M. ODELL.

Sworn to before me this 7th day of November, 1899.

ANNA I. PHILLIPS,
Notary Public.

I hereby approve of the foregoing undertaking, both as to its form, manner of execution and as to the sufficiency of the sureties therein.

Dated November 8, 1899.

HENRY A. CHILDS,
Justice Supreme Court.

11 Supreme Court.

In the Matter of the Application of CORNELIUS L. HAINES to Enforce a Lien against the Canal-boat "ROB'T W. PARSONS."

The People of the State of New York to the sheriff of any county, Greeting:

Whereas, an application has been made to me by Cornelius L. Haines for a warrant to enforce a lien against the canal-boat or vessel called "Rob't W. Parsons," claimed by the said Cornelius L. Haines of the village of Middleport, Niagara county, N. Y., to collect the amount thereof; and

Whereas, it appears by the said application or petition of said Cornelius L. Haines, which was presented on such application, that he has a lien on said canal-boat or vessel called "Rob't W. Parsons," for the sum of $64.30, with interest thereon from the 29th day of May, 1899, and that he has duly filed specifications thereof pursuant to the statute in such case made and provided, and that he is entitled to this warrant according to the provisions of said statute, and he having given and delivered the undertaking required by law, and it appearing that this application is in conformity to the provisions of the code of civil procedure and of the statute in such case made and provided and the laws amendatory thereof and supplementary thereto.

Now, therefore, you are hereby commanded and required to seize and safely keep said canal-boat or vessel called "Rob't W. Parsons,"

or either of them, with its tackle, apparel or furniture, to sat-
12 isfy said claim of Cornelius L. Haines as above set forth, to be a lien upon said vessel according to law, and make return of your proceedings herein to me within ten days after such seizure.

Dated, November 8, 1899.

HENRY A. CHILDS,
Justice Supreme Court.

GEORGE F. THOMPSON,
Attorney for Petitioner.

Office and P. O. address, Middleport, Niagara Co., N. Y.

Supreme Court.

In the Matter of the Application of CORNELIUS L. HAINES to Enforce a Lien against the Canal-boat "ROB'T W. PARSONS."

On reading and filing the petition of Cornelius L. Haines, verified November 6, 1899, showing that he has a lien on above-named canal-boat amounting to $64.30 with interest, and on reading and filing his undertaking thereupon, and a warrant having been duly issued by me for the seizure of such vessel,

Now, on motion of George F. Thompson, attorney for petitioner,

It is ordered that the master, or other person in charge of said vessel, and also that the owner and consignee thereof, show cause before me at supreme court chambers, city and county hall, in the city and county of Buffalo, county of Erie, N. Y., on the 28th day of November, 1899, at 2 o'clock in the afternoon of that day, or as soon thereafter as counsel can be heard, why such vessel,
13 seized by virtue of such warrant, should not be sold to satisfy the lien specified in said application.

Dated, November 8, 1899.

HENRY A. CHILDS,
Justice Supreme Court.

Supreme Court.

In the Matter of the Application of CORNELIUS L. HAINES to Enforce a Lien against the Canal-boat "ROB'T W. PARSONS."

STATE OF NEW YORK, *County of Montgomery,* } *ss:*

Clara Perry, being duly sworn, deposes and says that she is the owner of the canal-boat "Robert W. Parsons," above named, and has been such owner for several years last past; that said canal-boat or vessel is about eighteen years old, and has been in commission during all of that time; that said canal-boat is of more than twenty tons burden, and has been since it was built employed in the business of commerce and navigation upon the Erie canal and Hudson river, in the State of New York, which are public navigable waters connecting the great lakes of Erie, St. Clair, Huron, Michigan and

Superior, and their tributary waters, with the Atlantic ocean, and upon which canal and river commerce and navigation are conducted and carried on between ports and places in different States, and between the United States and foreign countries, and said boat is also so employed in the harbor and bay of New York and the public navigable waters connecting the same, and said boat has
14 been so employed between ports and places in the State of New York, and between ports and places in different States. That the bill of repairs set forth in the petition upon which the warrant of attachment in the above-entitled proceeding was issued, is simply a bill of ordinary repairs of the vessel and not for building or rebuilding the same. The materials supplied, articles, labor, etc., referred to in said bill of repairs, were not furnished for the building or rebuilding of said boat, or for the fitting, furnishing and equipping of a boat not in commission, but were in the nature of ordinary repairs upon a vessel in active commission and navigation. That the specifications of lien filed, and the lien sought to be obtained thereby for such repairs, and to be enforced in this proceeding, are founded upon a maritime contract, and deponent claims that this court is without jurisdiction to proceed *in rem* against the said canal-boat, and therefore prays that the warrant of attachment issued against said vessel or canal-boat on the 8th day of November, 1899, and all proceedings had thereupon or thereunder be vacated and set aside, and that the sheriff who now has said vessel in custody be directed to deliver said canal-boat to deponent.

Deponent further says that by section 2, article III, of the Constitution of the United States, the judicial power of the courts of the United States extends to all cases of admiralty and maritime jurisdiction. That by sec. 563 of the Revised Statutes of the United States, subdivision 8th, the district courts of the United States are granted jurisdiction of all civil causes of admiralty and maritime jurisdiction, and such jurisdiction is thereby also made exclusive, except in the particular cases where jurisdiction of such causes and
15 seizures is given to the circuit courts. That in so far as the statutes of the State of New York give a lien and provide a remedy for enforcing the same *in rem* they are unconstitutional and contrary to the terms and provisions of the Constitution of the United States and of the statute of the United States, providing for jurisdiction in admiralty and maritime causes exclusively in the courts of the United States, and said statutes of the State of New York are therefore void and of no effect.

Deponent further says that at the time of the attachment of said vessel by the sheriff, and when the same was seized by him at Albany, New York, under and by virtue of the warrant issued in this proceeding, the said canal-boat or vessel had upon her and was carrying a cargo of lumber to W. R. Adams & Co., Atlantic basin, Brooklyn, New York, shipped at Buffalo, New York, and said vessel or canal-boat was so employed and engaged upon a voyage between the ports of Buffalo and Brooklyn, in the State of New York.

MRS. CLARA PERRY. [SEAL.]

Sworn to before me this 15th day of December, 1899.
M. WALRATH,
Justice of the Peace.

16 Supreme Court.

In the Matter of the Application of CORNELIUS L. HAINES to Enforce a Lien against the Canal-boat "ROB'T W. PARSONS."

STATE OF NEW YORK, } ss:
County of Niagara, }

Cornelius L. Haines, being duly sworn, says he is a canal-boat builder, with dry docks and yards located at the village of Middleport, Niagara county, N. Y.; that the repairs specified in the bill of items attached to the specifications of lien in this proceeding were all for building permanent repairs upon the boat "Robert W. Parsons," to wit: A part of one side of said boat was taken out and her cheek plank removed, and the side of the boat and the cheek plank was rebuilt into said boat; that said repairs were performed upon said dry docks, in said yard in Middleport, N. Y., and the boat could not proceed without such repairs having been made at that time, and the condition of said boat was such at the time it was put on said dock that without such repairs it could not have navigated the canal further.

Deponent further says, that at the time said repairs were furnished said canal-boat was making a trip from the city of New York to Buffalo, and at the time the same was seized in this proceeding the said boat was making a trip from Buffalo to the city of Brooklyn, N. Y.; that said boat has no propelling power and the only way that it can be propelled is by horse-power or by being attached to some other craft having power of its own, and is of the type of boats
17 known as Erie canal-boats; that in order for said boat to be navigated outside the confines of the State of New York, it would be necessary to attach the same to some other boat.

C. L. HAINES.

Sworn to before me this 14th day of December, 1899.
ANNA I. PHILLIPS,
Notary Public.

An affidavit of Levi Perry was read in a motion to vacate the attachment in this proceeding, a copy of which is hereto attached marked Exhibit "A."

EXHIBIT "A."

Supreme Court.

In the Matter of the Application of CORNELIUS L. HAINES to Enforce a Lien against the Canal-boat "ROB'T W. PARSONS."

COUNTY OF NEW YORK, *ss*:

Levi Perry, being duly sworn, deposes and says that he is the master of the canal-boat "Rob't W. Parsons" above named, and has been such for about three years last past, and is the husband of Clara Perry, the owner of said vessel.

That said vessel is about 18 years old and has been in commission during all of that time, running on the waters of the Erie canal and Hudson river since she was built some eighteen years ago as aforesaid, at Buffalo or Tonawanda, N. Y. That the bill of repairs set forth in the petition upon which the warrant of attachment in the above-entitled proceeding was issued is simply a bill for ordinary repairs of the vessel and not for building or rebuilding the same. That the materials, supplies, articles, labor, etc., referred to in said bill of repairs were not furnished for the building or rebuilding of said boat, or for the fitting, furnishing and equipping of a boat not in commission, but were in the nature of ordinary repairs upon a vessel in active commission and navigation, and deponent therefore claims as master of said vessel, and as agent of her owner, that this court is without jurisdiction to proceed *in rem* against the said canal-boat, and therefore prays that the warrant of attachment issued against said vessel by Hon. Henry A. Childs, a justice of the supreme court of the State of New York, on the 8th day of November, 1899, and all proceedings had thereupon or thereunder be vacated and set aside, and that the sheriff who now has said vessel in custody be directed to deliver said canal-boat to her owner.

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Deponent further states, that at the time of the attachment of said vessel by the sheriff, in whose custody she now is, there was and still is on her a cargo of lumber consigned to W. R. Adams & Co., Atlantic bas., Brooklyn, N. Y., shipped at Buffalo, N. Y., on board of said vessel on or about November 1, 1899, by J. C. Anthony's Sons, which cargo of lumber is now being held and detained on board of said vessel at Albany, N. Y., by said sheriff by virtue of his seizure of said vessel under said warrant of attachment.

LEVI PERRY.

Sworn to before me this 20th day of November, 1899.

DANIEL J. AUGUSTINE,
Com. of Deeds, New York City.

19 Supreme Court.

In the Matter of the Application of CORNELIUS L. HAINES to Enforce a Lien against the Canal-boat "ROB'T W. PARSONS."

The above-entitled proceeding coming on to be heard upon the order made herein by Hon. Henry A. Childs, justice of the supreme court, dated November 8, 1899, whereby the owner of said vessel or canal-boat was directed to show cause before said justice at supreme court chambers, city and county hall, in the city of Buffalo, N. Y., on the 28th day of November, 1899, why such vessel, seized by virtue of a warrant issued herein, should not be sold to satisfy the lien specified in said application, and the said proceedings having been duly adjourned to this day, and Clara Perry, the owner of said vessel or canal-boat, having made and filed her affidavit, sworn to on the 15th day of December, 1899, as an answer in said proceedings, and the said Cornelius L. Haines having read and filed his affidavit, sworn to on the 14th day of December, 1899, in support of said motion, it is hereby stipulated and agreed by and between the attorneys for the respective parties that the facts stated in said affidavits are to be deemed and taken as established in said proceeding, and that the said affiants respectively would testify to such facts herein;

And it being further stipulated and agreed that the said canal-boat or vessel was built as an Erie Canal boat, and that heretofore and on the day preceding the Dewey celebration in New York city, said vessel or canal-boat was loaded by the owner thereof at

20 the Hoboken, New Jersey, docks with a cargo consigned to Buffalo, New York.

It is further stipulated that the owner of said canal-boat shall not claim any damages by reason of the detention of said boat in these proceedings subsequent to the 6th day of December, 1899.

Dated, Buffalo, N. Y., December 18, 1899.

CLINTON & CLARK,
Attorneys for Owner, Clara Perry.
GEORGE F. THOMPSON,
Attorney for Cornelius L. Haines.

At a special term of the supreme court, held at the city and county hall, in the city of Buffalo, N. Y., in and for the eighth judicial district, in the State of New York, on the 18th day of December, 1899.

Present, Hon. Henry A. Childs, justice presiding.

In the Matter of the Application of CORNELIUS L. HAINES to Enforce a Lien against the Canal-boat "ROB'T W. PARSONS."

The order to show cause herein why such vessel seized by virtue of the warrant, issued for the seizure of such vessel, should not be sold to satisfy the lien specified in said application, having been returnable November 28, 1899, and by consent of all parties appearing, having been held until this day, and due proof of service of the

order to show cause and the publication of notice of seizure of said canal-boat, and service thereof having been filed, and upon
21 reading and filing the affidavit of Clara Perry, the owner of said canal-boat, sworn to December 15, 1899, in opposition to said motion, and the affidavit of Cornelius L. Haines in support thereof, and upon reading and filing the stipulation of the attorneys herein, after hearing George F. Thompson, Esq., attorney for said Cornelius L. Haines, petitioner, for said motion, and Martin Clark, Esq., of counsel for said owner, Clara Perry, in opposition thereto, it is

Ordered that said motion be and the same is hereby granted, and the sheriff of Albany county be, and he hereby is directed to sell said boat, "Robert W. Parsons," together with her tackle, apparel and furniture, to satisfy the lien of said Cornelius L. Haines, set forth in the petition herein, which is hereby established as set forth in said petition, together with the costs and expenses of these proceedings, and such sale, as provided by law.

And it is further ordered that said sheriff make such sale within ten days after the receipt by him of this order, and make a return to the justice issuing this order of all his proceedings hereunder, and that out of the proceeds of said sale he first deduct his fees and expenses of these proceedings and said sale, and pay the remainder of said proceeds into this court, subject to the further order of this court.

And it is further ordered that the order heretofore entered in this proceeding to the foregoing effect be vacated and set aside, and this order entered in Niagara county clerk's office in place thereof.

22 *Sheriff's Sale.*

COUNTY OF ALBANY, *ss:*

By virtue of special term order, issued out of the supreme court of the State of New York, to me directed and delivered, against the canal-boat, "Rob't W. Parsons," together with her tackle, apparel and furniture, I have seized and taken all the right, title and interest of said defendant in and to the following-described property, to wit: canal-boat, "Rob't W. Parsons," her tackle, apparel and furniture, which I shall expose to sale, as the law directs, on the 19th day of December, 1899, at 12 o'clock, noon, at the Capitol dock, foot of Columbia street, in the city of Albany.

Dated this 12th day of December, 1899.

CHAS. F. SCHIFFERDECKER, *Sheriff*,
By S. W. PITTS, *Under Sheriff*.

Supreme Court.

In the Matter of the Application of CORNELIUS L. HAINES to Enforce a Lien against the Canal-boat "ROB'T W. PARSONS."

I, the undersigned, Charles F. Schifferdecker, sheriff of the county of Albany, do hereby make return of my proceedings under the annexed orders, pursuant to the statute in such case made and pro-

vided, as follows: I received the first order hereunto annexed on the 12th day of December, 1899, and thereafter proceeded to advertise said boat for sale with her tackle, apparel and furniture,
23 pursuant to the provisions of the said order, by posting three notices thereof in three public and conspicuous places in the city of Albany, N. Y., a copy of which notice is hereunto annexed, marked Exhibit A, at least six days prior to the day of sale mentioned therein; that on the day of sale mentioned in said notice I proceeded to and did sell said boat, her tackle, apparel and furniture, at public auction and the same was finally struck off to George F. Thompson of Middleport, Niagara county, N. Y., for the sum of $155.00, he being the highest bidder therefor, and that being the highest sum bidden for the same; that out of said proceeds I have deducted the sum of $83.33, the same being my fees and expenses in seizing, preserving, watching and selling said vessel; that the balance of said proceeds, to wit, the sum of $71.67 is herewith returned, together with said orders herein.

Dated, December 19, 1899.

CHAS. F. SCHIFFERDECKER,
Sheriff of Albany County,
By S. W. PITTS, *Under Sheriff.*

Supreme Court.

In the Matter of the Application of CORNELIUS L. HAINES to Enforce a Lien against the Canal-boat "ROB'T W. PARSONS."

An order to sell the canal-boat "Rob't W. Parsons" having been made herein and delivered to the sheriff of Albany county, and said sheriff having sold said boat pursuant to said order and made his return of his proceedings to me as the law requires, together with the proceeds thereof, which proceeds, after deducting said
24 sheriff's fees, amount to the sum of $71.67.

Now on motion of George F. Thompson, attorney for petitioner, notice is hereby given to all persons having liens upon said boat "Rob't W. Parsons," and the master, owner, agent or consignee thereof, and all persons interested therein are hereby required to appear before me at the supreme court chambers, at the city and county hall, in the city of Buffalo, Erie county, N. Y., on the 24th day of February, 1900, at 2 o'clock in the afternoon of that day to attend the distribution of such proceeds.

Dated, January 22, 1900.

HENRY A. CHILDS,
Justice Supreme Court.

Supreme Court.

In the Matter of the Application of CORNELIUS L. HAINES to Enforce a Lien against the Canal-boat "ROB'T W. PARSONS."

An order to sell the canal-boat "Rob't W. Parsons" having been made herein and delivered to the sheriff of Albany county, and said

sheriff having sold said boat pursuant to said order and made his return of his proceedings to me as the law requires, together with the proceeds thereof, which proceeds, after deducting said sheriff's fees, amount to the sum of $71.67.

Now on motion of George F. Thompson, attorney for petitioner, notice is hereby given to all persons having liens upon said boat "Rob't W. Parsons," and the master, owner, agent or consignee thereof, and all other persons interested therein are hereby
25 required to appear before me at the supreme court chambers, at the city and county hall, in the city of Buffalo, Erie county, N. Y., on the 24th day of February, 1900, at 2 o'clock in the afternoon of that day to attend the distribution of such proceeds.

Dated, January 22, 1900.

HENRY A. CHILDS,
Justice Supreme Court.

STATE OF NEW YORK, }
City and County of Albany, } ss:

Henry L. Baer, of the city of Albany, being duly sworn, says that he is foreman for the publishers of the Albany Evening Journal, a daily newspaper printed and published in the city and county of Albany aforesaid, and designated as "The State Paper," and that the notice, of which a printed copy is annexed, has been regularly published in the said Albany Evening Journal once in each week for three weeks, four times, successively, commencing on the 25th day of January, 1900, and ending on the 15th day of February, 1900.

HENRY L. BAER.

Sworn before me this 18th day of December, 1900.

JOHN M. DAVIS,
Notary Public.

26 Supreme Court.

In the Matter of the Application of CORNELIUS L. HAINES to Enforce a Lien against the Canal-boat "ROB'T W. PARSONS."

Clara Perry, owner of the canal-boat, "Robert W. Parsons," proceeded against in the above-entitled proceeding, answering the petition herein of said Cornelius L. Haines, by Clinton & Clark, her attorneys, alleges:

That at all the times in said petition named she was and for a number of years last past has been the owner of the canal-boat "Robert W. Parsons." That said canal-boat is of more than twenty tons burden, and has been since it was built employed in the business of commerce and navigation upon the Erie canal and the Hudson river, in the State of New York, which are public navigable waters connecting the Great Lakes of Erie, St. Clair, Huron, Michigan and Superior, and their tributary waters with the Atlantic ocean, and upon which canal and river commerce and navigation are conducted and carried on between ports and places in different States, and between the United States and foreign countries, and said canal-

boat is and has been so employed in the harbor and upon the bay of New York and the public navigable waters connecting the same, and said boat has been so employed between the ports and places in the State of New York and between ports and places in different States. That the bill of repairs set forth in the petition upon which the warrant of attachment in the above-entitled proceeding was issued, is simply a bill of ordinary repairs of the vessel and not for building or rebuilding the same. That the materials, sup-
27 plies, articles, labor, etc., referred to in said bill of repairs were not furnished for the building or rebuilding of said boat, or for the fitting, furnishing and equipping of a boat not in commission, but were in the nature of ordinary repairs upon a vessel in active commission and navigation. That the specifications of lien filed, and the lien sought to be obtained thereby for such repairs and to be enforced in these proceedings, are founded upon a maritime contract, and the said owner claims that this court is without jurisdiction to proceed *in rem* against the said canal-boat.

Said owner, further answering said petition, alleges that by section 2, article 3, of the Constitution of the United States, the judicial power of the courts of the United States extends to all cases of admiralty and maritime jurisdiction. That by section 563 of the Revised Statutes of the United States, subdivision eighth, the district courts of the United States are granted jurisdiction of all civil causes of admiralty and maritime jurisdiction, and such jurisdiction is thereby also made exclusive, except in the particular cases where the jurisdiction of such causes and seizures is given to the circuit courts. That in so far as the statutes of the State of New York give a lien and provide a remedy for enforcing the same *in rem*, they are unconstitutional and contrary to the terms and provisions of the Constitution of the United States and of the statutes of the United States, providing for jurisdiction in admiralty and maritime causes exclusively in the courts of the United States, and said statutes of the State of New York are therefore void and of no effect.

Wherefore, the said owner of said canal-boat "Robert W.
28 Parsons," demands judgment dismissing the petition of said Cornelius L. Haines, and prays that all proceedings had thereupon or thereunder be vacated and set aside, and the possession of said canal-boat awarded to said owner, and that she be allowed her costs and expenses in this proceeding, and that she may have such other and further relief as shall be just and proper.

CLINTON & CLARK,
Attorneys for Owner, Clara Perry,
No. 1012 *Guaranty Building, Buffalo, N. Y.*

STATE OF NEW YORK, }
County of Montgomery, } *ss:*

Clara Perry, being duly sworn, deposes and says that she is owner of the canal-boat "Robert W. Parsons," named in the above-entitled proceeding; that she has read the foregoing answer and knows the contents thereof, and that the same is true of her own knowledge,

except as to those matters which are therein stated to be alleged upon information and belief, and that as to those matters she believes it to be true.

CLARA PERRY.

Sworn to before me this 20th day of February, 1900.

M. WALRATH,
Justice of the Peace.

29 Supreme Court.

In the Matter of the Application of CORNELIUS L. HAINES to Enforce a Lien against the Canal-boat "ROB'T W. PARSONS."

An order having been made by the undersigned, Hon. Henry A. Childs, justice of the supreme court, on January 22, 1900, giving notice to all persons having liens on said boat, "Rob't W. Parsons," and the master, owner, agent or consignee thereof, and all persons interested therein, requiring them to appear before the undersigned at the supreme court chamber, in the city and county hall, in the city of Buffalo, Erie county, N. Y., on the 24th day of February, 1900, at 2 o'clock in the afternoon of that day, to attend the distribution of the proceeds of the sale of the said canal-boat herein, and due proof of publication and service of said notice having been filed and said distribution having been adjourned until this day;

Now, on motion of George F. Thompson, attorney for petitioner, and Martin Clark of counsel for Clara Perry, the owner of said boat, having appeared and filed an answer in opposition thereto, and it appearing that said owner appeared upon the return of the order to show cause herein and contested the claim of the petitioner and questioning the jurisdiction of the court in said proceedings, and the jurisdiction of the court having been sustained and an order of sale granted herein, and it appearing that the proceeds of said sale were the sum of $155.00, out of which the sheriff deducted the sum of $73.33, fee and expenses, leaving the balance for distribution $71.67, and due deliberation having been had,

30 It is ordered that said sheriff's fees and expenses be fixed and allowed at $73.33.

And it is further ordered, that the balance of the proceeds of said sale, to wit, the sum of $71.67, be distributed as follows:

That there be first paid to Cornelius L. Haines, or to George F. Thompson, his attorney, the following sums allowed herein as costs and disbursements, or in case there shall not be sufficient therefor, then that the said balance of said proceeds be paid to apply as follows:

That there first be paid to Cornelius L. Haines, or to George F. Thompson, his attorney, the sum of $2.35 expenses of filing said lien; the further sum of $20.00 statutory costs for exhibiting said lien; a further sum of $25.00 costs allowed by the undersigned justice in the order of the sale herein, and the further sum of $25.00 costs hereby allowed upon the distribution herein, to wit, the total sum of $72.33 costs and disbursements.

It appearing that the balance of the proceeds of said sale will be insufficient to pay said costs and expenses, for the reason it appears that there is nothing to be applied on the claim of the claimant herein.

It is further ordered that this order be entered *nunc pro tunc* as of March 7th, 1900, in the place and stead of order heretofore signed of that date.

Dated, November 20th, 1900.

HENRY A. CHILDS,
Justice Supreme Court.

31 Supreme Court.

In the Matter of the Application of CORNELIUS L. HAINES, Respondent, to Enforce a Lien against the Canal-boat, "Robert W. Parsons," CLARA PERRY, Owner, Appellant.

SIRS: You will please take notice that Clara Perry, the owner of the canal-boat, "Rob't W. Parsons," does hereby appeal to the appellate division of the supreme court, for the fourth department, from the final order made in the above-entitled proceedings, dated on the 20th day of November, 1900, and entered and filed in the office of the clerk of Niagara county, N. Y., on November 21st, 1900, and does so appeal from each and every part of said order.

And you will further take notice, that upon such appeal the said appellant intends to bring up for review the intermediate order made in said proceeding on the 18th day of December, 1899, directing the sale of said canal-boat to satisfy the lien specified in said application, also the intermediate order made in said proceeding on the 22d day of January, 1900.

Dated, Buffalo, N. Y., November 21, 1900.

Yours, etc.,
CLINTON & CLARK,
Attorneys for Appellant, Clara Perry,
1012 *Guaranty Bldg., Buffalo, N. Y.*

To George F. Thompson, Esq., attorney for respondent, Cornelius L. Haines, and Samuel H. Pettit, Esq., county clerk of Niagara county.

32 STATE OF NEW YORK, } ss:
County of Niagara, }

I, Samuel H. Pettit, county clerk of Niagara county, N. Y., do hereby certify that I have compared the foregoing papers constituting the papers on appeal to the appellate division in the above-entitled action, and consisting of petition of Cornelius L. Haines, undertaking on attachment, warrant of attachment, order to show cause of November 8, 1899, affidavit of Clara Perry of December 15, 1899, affidavit of Cornelius L. Haines of December 14, 1899, affidavit of Levi Perry of November 20, 1899, an Exhibit "A," stipulation of facts by attorneys, order to sell boat of December 18, 1899, report of sale by sheriff, order of distribution of January 22, 1900, notice to attend on distribution, proof of publication, answer of

owner, final order of distribution of November 20, 1900, notice of appeal, with the originals of such papers entered and on file in the Niagara county clerk's office, and that all the said papers are true and correct transcripts of the originals of each and all of said papers in said action, and of the whole thereof entered and on file in the office of the clerk of Niagara county, N. Y.

In witness whereof, I have hereunto set my hand and seal this 20th day of December, 1900.

SAMUEL H. PETTIT,
County Clerk.

33 Supreme Court, Appellate Division, Fourth Judicial Department.

CLERK'S OFFICE, ROCHESTER, N. Y.

I, Newell C. Fulton, clerk of the appellate division of the supreme court in the fourth judicial department, do hereby certify that the following is a copy of the order made by said court upon the appeal in the above-entitled action or proceeding and entered in my office on the 22d day of January, 1901, and that the original case or papers upon which said appeal was heard are hereunto annexed.

In witness whereof, I have hereunto set my hand and
[SEAL.] affixed the seal of said court, at the city of Rochester, this 23d day of January, 1901.

NEWELL C. FULTON.

34 At a term of the appellate division of the supreme court, held in and for the fourth judicial department, at the city of Rochester, on the 22d day of January, 1901.

Present: Honorable William H. Adams, presiding justice.
" Honorable Peter B. McLennan,
" Honorable Alfred Spring,
" Honorable Pardon C. Williams,
" Honorable Frank C. Laughlin,
Associate justices.

Order on Appeal from Order.

In the Matter of the Application of CORNELIUS L. HAINES, Respondent, to Enforce a Lien against the Canal-boat "Robert W. Parsons," CLARA PERRY, Owner, Appellant.

The above-named Clara Perry, the appellant in this action, having appealed to the appellate division of the supreme court from an order of the supreme court entered in the office of the clerk of the county of Niagara on the 21st day of November, 1900, and the said appeal having been argued by Mr. Martin Clark, of counsel for the appellant, and by George F. Thompson, of counsel for the respondent, and due deliberation having been had thereon,

It is hereby ordered that the order so appealed from be and
35 the same is hereby affirmed, with costs, on opinion of Adams, P. J., in same case, reported in 52 App. Div., at page 550.

All concur, except Williams and Laughlin, J. J., who dissent upon the grounds stated in opinion of Williams, J., upon former appeal.

NEWELL C. FULTON, *Clerk.*

Supreme Court.

In the Matter of the Application of CORNELIUS L. HAINES, Respondent, to Enforce a Lien against the Canal-boat "Robert W. Parsons," CLARA PERRY, Owner, Appellant.

Clara Perry, the appellant in the above-entitled special proceeding, having appealed to the appellate division of the supreme court from a final order of the supreme court entered in the office of the clerk of the county of Niagara on the 21st day of November, 1900.

Now on motion of George F. Thompson, counsel for the respondent, and after hearing Mr. Martin Clark, of counsel for the appellant, in opposition thereto, and due deliberation having been had,

It is ordered that the said order so appealed from be, and
36 the same hereby is, in all things affirmed.

And it is further ordered that the appellant, Clara Perry, pay to the respondent, Cornelius L. Haines, herein the sum of $75.12, costs and disbursements of this appeal, and that the respondent have execution therefor.

Dated February 11, 1901.

EDWARD G. PARKER,
Deputy Clerk.

Supreme Court.

In the Matter of the Application of CORNELIUS L. HAINES, Repondent, to Enforce a Lien against the Canal-boat "Robert W. Parsons," CLARA PERRY, Owner, Appellant.

GENTLEMEN: You will please take notice that the above-named Clara Perry, owner of the canal-boat "Robert W. Parsons," does hereby appeal to the court of appeals from an order of the appellate division made in said proceeding on the 22d day of January, 1901, and on that day entered in the office of the clerk of said appellate division, and on the 11th day of February, 1901, entered in the office of the county clerk of the county of Niagara affirming an
37 order made in said proceedings and entered in the office of said clerk on the 21st day of November, 1900, and does also hereby appeal to said court of appeals from the judgment of affirmance and for costs entered pursuant to said order of the appellate division in the office of the clerk of the county of Niagara on the 11th day of February, 1901, and does so hereby appeal to said court of appeals from each and every part of said order and judgment of affirmance.

Dated Buffalo, N. Y., February 25th, 1901.

Yours, etc., CLINTON & CLARK,
Attorneys for Appellant, 1012 *Prudential Building*,
Buffalo, N. Y.

To George F. Thompson, Esq., attorney for respondent. Samuel H. Pettit, Esq., county clerk of Niagara county.

STATE OF NEW YORK, } ss:
County of Niagara, }

I, Edward G. Parker, deputy clerk of the county of Niagara, N. Y., do hereby certify that I have compared the foregoing papers constituting the papers on appeal to the court of appeals in the above-entitled action, and consisting of petition of Cornelius L. Haines, undertaking on attachment, warrant of attachment, order to show cause on November 8th, 1899, affidavit of Clara Perry of December 15th, 1899, affidavit of Cornelius L. Haines of December 14th, 1899, affidavit of Levi Perry of November 20th, 1899, as "Exhibit A,"
38 stipulation of facts by attorneys, order to sell boat of December 18th, 1899, report of sale by sheriff, order of distribution of January 22d, 1900, notice to attend on distribution, proof of publication, answer of owner, final order of distribution of November 20th, 1900, notice of appeal to the appellate division, certified copy of order of affirmance of appellate division, judgment of affirmance and notice of appeal to the court of appeals, with the originals of such papers entered and on file in the Niagara county clerk's office, and that all the said papers are true and correct transcripts of the originals of each and all of said papers in said action and of the whole thereof entered and on file in the office of the clerk of Niagara county, N. Y.

In witness whereof, I have hereunto set my hand and seal this 28th day of February, 1901.

[SEAL.] EDWARD G. PARKER,
Deputy County Clerk.

39 STATE OF NEW YORK, *ss:*

Court of Appeals.

Pleas in the court of appeals, held at the capitol in the city of Albany, on the 10th day of July, in the year of our Lord one thousand nine hundred and one, before the judges of said court.

Witness the Hon. Alton B. Parker, chief judge presiding.

W. H. SHANKLAND, *Clerk.*

Remittitur, July 11th, 1901.

In the Matter of the Application of CORNELIUS L. HAINES, Respondent, to Enforce a Lien against the Canal-boat Robert W. Parsons; CLARA PERRY, Owner, Appellant.

Be it remembered that on the 2nd day of March in the year of our Lord one thousand nine hundred and one, Clara Perry, owner, the appellant in this proceeding came here into the court of appeals by Clinton and Clark, her attorneys and filed in the said court a notice of appeal and return thereto from the order of the appellate division of the supreme court in and for the fourth judicial department. And Cornelius L. Haines the respondent in said proceeding afterwards appeared in said court of appeals by George F. Thompson, his attorney.

Which said notice of appeal and the return thereto filed as aforesaid are hereunto annexed.

Whereupon the said court of appeal- having heard this proceeding argued by Mr. Martin Clark of counsel for the appellant and by Mr. George F. Thompson of counsel for the respondent and after due deliberation had thereon did order and adjudge that the order of the appellate division of the supreme court appealed from
40 herein be and the same hereby is affirmed with costs.

And it was also further ordered, that the record aforesaid and the proceedings in this court be remitted to the said supreme court there to be proceeded upon according to law.

Therefore, it is considered that the said order be, and the same hereby is affirmed with costs as aforesaid and hereupon, as well *as* the notice of appeal and return thereto aforesaid as the judgment of the court of appeals aforesaid by them given in the premises, are by the said court of appeals remitted into the supreme court of the State of New York before the justices thereof according to the form of the statute in such case made and provided to be enforced according to law and which record now remains in the said supreme court before the justices thereof, &c.

W. H. SHANKLAND,
Clerk of the Court of Appeals of the State of New York.

Court of appeals, clerk's office.

ALBANY, *July 11th*, 1901.

I, hereby certify, that the preceding record contains the correct transcript of the proceedings in said proceeding in the court of appeals with the papers originally filed therein, attached thereto.

[SEAL.] W. H. SHANKLAND, *Clerk.*

41 At a special term of the supreme court, held at the city and county hall in the city of Buffalo, in and for the eighth judicial district of the State of New York on the 26th day of July, 1901.

Present: Hon. Truman C. White, justice presiding.

Supreme Court, Niagara County.

In the Matter of the Application of CORNELIUS L. HAINES, Respondent, to Enforce a Lien against the Canal-boat "Robert W. Parsons;" CLARA PERRY, Owner, Appellant.

On reading and filing the remittitur issued by the court of appeals under the hand of the clerk and the seal of said court, showing that the above-entitled proceeding was appealed to, argued in and deliberated upon by said court of appeals, and that said court have rendered judgment that the final order herein appealed from be affirmed with costs,

Now on motion of George F. Thompson, attorney for respondent,

Ordered that said order and judgment be and hereby is made the order and judgment of this court.

EDWARD G. PARKER,
Deputy Clerk.

Erie special term, Jul- 26, 1901.—Granted and ordered entered in Niagara county clerk's office.

PERRY E. WURST,
Sp. Dep. Clerk.

42 Supreme Court.

In the Matter of the Application of CORNELIUS L. HAINES, Respondent, to Enforce a Lien against the Canal-boat "Robert W. Parsons;" CLARA PERRY, Owner, Appellant.

Clara Perry, the appellant in the above-entitled special proceeding, having appealed to the appellate division of the supreme court and the order appealed from herein having been affirmed by an order of affirmance entered in the office of the clerk of Niagara county on the 11th day of February, 1901, and said Clara Perry having appealed to the court of appeals from said order made by the appellate division on January 22, 1901, and on that day entered in the office of the clerk of said appellate division and on the 11th day of February, 1901, entered in the office of the clerk of Niagara county affirming an order made in said proceeding and entered in the office of said clerk on November 21, 1900,

Now, on motion of George F. Thompson, of counsel for the respondent, and after hearing Mr. Martin Clark, of counsel for the appellant in opposition thereto, and due deliberation having been had, and the court of appeals having by its order affirmed said judgment and said order of affirmance, and remittitur thereon having been duly filed and made a judgment and order of this court,

It is ordered, that the said order entered in Niagara county clerk's office on February 11th, 1901, so appealed from be and the same hereby is in all things affirmed.

And it is further ordered that the appellant, Clara Perry, pay to the respondent, Cornelius L. Haines, herein the sum of one hundred and eighteen dollars and eighty-five cents ($118.85) costs and disbursements of this appeal and that the respondent have execution therefor.

Dated October 24, 1901, at 1 p. m.

EDWARD G. PARKER,
Deputy Clerk.

43 UNITED STATES OF AMERICA:

Supreme Court of the State of New York.

In the Matter of the Application of CORNELIUS L. HAINES to Enforce a Lien against the Canal-boat "Robert W. Parsons;" CLARA PERRY, Owner.

Petition for Writ of Error.

Now comes the above-named Clara Perry, owner of the canal-boat "Robert W. Parsons," and says: That said proceeding *in rem* was commenced in the supreme court of the State of New York by the said Cornelius L. Haines to enforce a lien against the canal-boat "Robert W. Parsons," which said lien was acquired under the State statute for certain repairs made by said Haines upon said boat. The only defence made to the petition, and throughout the proceeding, was that the State court was without jurisdiction to proceed to enforce said lien *in rem*, it appearing that the said boat was of more than twenty tons burden, employed in the business of commerce and navigation upon the Erie canal and Hudson river, in the State of New York and upon the harbor and bay of New York and the public navigable waters connecting the same, and upon which canal, river, harbor and bay commerce and navigation are conducted and carried on between ports and places in different States, and between the United States and foreign countries, and said boat being so employed between ports and places in the State of New York and between ports and places in different States. That by the affidavit of defence and answer filed by said owner such jurisdiction
44 of said State court was denied and drawn in question on the ground that it was contrary to the provisions of art. III, sect. 2, of the Constitution of the United States, whereby it is provided that the judicial power of the United States shall extend to all cases of admiralty and maritime jurisdiction, and contrary to the provisions of sect. 536, sub. 8, of the Revised Statutes of the United States, whereby the district courts of the United States are granted jurisdiction of all civil causes of admiralty and maritime jurisdiction, and such jurisdiction is thereby also made exclusive except in the particular cases where jurisdiction of such causes and seizures is given to the circuit courts; and the said Clara Perry claimed the right and privilege of having said proceeding to enforce said lien instituted and conducted, and the liability of the boat owned by her for the repairs for which said lien was claimed determined, in the courts of the United States under said statutes of the United States, and the decision of said State court is against such right and privilege specially set up and claimed by said Clara Perry under such Constitution and statute.

That a final order of the supreme court of the State of New York was entered as of March 7th, 1900, in the clerk's office of the county of Niagara, in the said State, in favor of the above-named petitioner, overruling said affidavit of defence and the answer filed by said owner, and sustaining the jurisdiction of said court, and an order of

sale having theretofore been granted, distributing the proceeds arising from said sale; that an appeal from said final order was duly taken to the appellate division of the supreme court for the fourth department, and said appeal having been duly argued, the said final order so appealed from was by the said appellate division affirmed on the 22nd day of January, 1901, and a judgment of affirmance entered in the office of the clerk of Niagara county on the 11th day of February, 1901; that said owner duly appealed from said
45 order and judgment of affirmance to the court of appeals of the State of New York, and thereafter, and on the 10th day of July, 1901, an order or decree affirming said order and judgment so appealed from was made by said court of appeals, which is the highest court of said State in which a decision in the suit could be had, without any opinion being written by said court of appeals, and thereafter and on the 25th day of July, 1901, upon the remittitur from said court of appeals into the supreme court of the State of New York, according to the form of the statute in such case made and provided to be enforced according to law, an order was made by said supreme court making the order and judgment of the court of appeals the order and judgment of said supreme court and a final judgment of affirmance, and for $118.85 costs in favor of said Cornelius L. Haines and against said Clara Perry was on the 24th day of October, 1901, entered in the office of the clerk of Niagara county, in said State, by which said judgment said Clara Perry was aggrieved in that in said judgment and the proceedings had prior thereunto in this cause several errors were committed to the prejudice of said Clara Perry, and that said court proceeded without jurisdiction in said cause, all of which more fully appears from the assignment of errors filed with this petition.

Wherefore, said Clara Perry hereby prays that a writ of error from said decision and judgment may issue to the supreme court of the State of New York, or to the proper court for the correction of the errors complained of, and that a duly authenticated transcript of the record, proceedings and papers herein may be sent to the said Supreme Court of the United States.

Assignment of errors herewith.

CLARA PERRY,
By MARTIN CLARK,
Her Attorney.

46 STATE OF NEW YORK, } ss:
County of Erie, }

Martin Clark, being duly sworn, says that he has read the foregoing petition and knows the contents thereof, and that the same is true to the knowledge of deponent except as to the matters therein stated to be alleged on information and belief, and that as to those matters he believes it to be true; and deponent further says that all of the matters stated in said petition are within the personal knowledge of deponent.

MARTIN CLARK.

Sworn to before me, this 18th day of Nov., 1901.

H. H. CULVER,
Notary Public, Erie Co., N. Y.

47 [Endorsed:] Supreme court. In the matter of the application of Cornelius L. Haines against the canal-boat Robert W. Parsons. Petition for writ of error. Martin Clark, att'y for pl'ff in error.

48 UNITED STATES OF AMERICA:

Supreme Court of the State of New York.

In the Matter of the Application of CORNELIUS L. HAINES to Enforce a Lien against the Canal boat "Robert W. Parsons;" CLARA PERRY, Owner.

Assignment of Errors.

Now comes the above-named Clara Perry and files herewith her petition for a writ of error, and says that there are errors in the records and proceedings of the above-entitled proceeding, and, for the purpose of having the same reviewed in the Supreme Court of the United States, makes the following assignment of errors.

The supreme court of the State of New York and the court of appeals of said State, which is the highest court of said State in which a decision in the said suit could be had, erred in holding and deciding by the final judgment or decree entered in said suit that the said court had jurisdiction to enforce by proceedings *in rem*, pursuant to the statutes of said State, a lien acquired under said statutes for making repairs to a boat of more than twenty tons burden, employed in the business of commerce and navigation upon the Erie canal and Hudson river, in the State of New York, and upon the harbor and bay of New York and the public navigable waters connecting the same, and upon which canal, river, harbor and bay commerce and navigation are conducted and carried on between ports and places in different States, and between the United States and foreign countries, and said boat being so employed between ports and

49 places in the State of New York and between ports and places in different States, contrary to the provisions of art. III, sect. 2, of the Constitution of the United States, whereby it is provided that the judicial power of the United States shall extend to all cases of admiralty and maritime jurisdiction, and contrary to the provisions of sect. 536 of the Revised Statutes of the United States, sub. 8th, whereby the district courts of the United States are granted jurisdiction of all civil causes of admirality and maritime jurisdiction, and such jurisdiction is thereby also made exclusive, except in the particular cases where jurisdiction of such causes and seizures is given to the circuit courts.

Such jurisdiction of said State courts was denied and drawn in question by said Clara Perry, owner of said boat, on the ground that it was repugnant to the Constitution and statutes aforesaid, of

the United States, and in contravention thereof, and she claimed the right and privilege of having said proceedings to enforce said lien instituted and conducted, and the liability of the boat owned by her for the repairs for which said lien was claimed, determined, in the courts of the United States under said statutes of the United States, and the decision of said courts is against such right and privilege specially set up and claimed by said Clara Perry under such Constitution and statutes.

There is error also in this, to wit: that by the record aforesaid it appears that the judgment aforesaid was given for the said Cornelius L. Haines directing a sale of the boat "Robert W. Parsons" to satisfy the lien and claim of said Haines and a distribution of the proceeds arising from such sale in the proceedings aforesaid, whereas by the law of the land, and pursuant to the provisions of art. III, sect. 2, of the Constitution of the United States, and sect. 536, sub. 8, of the Revised Statutes of the United States, the proceedings aforesaid should have been dismissed by said State courts for want
50 of jurisdiction, and a judgment ought to have been given for said Clara Perry against said Cornelius L. Haines.

For which errors aforesaid, and other errors in the record and proceedings aforesaid, the said Clara Perry prays that the judgment aforesaid be reversed and a judgment entered for said Clara Perry and for costs.

MARTIN CLARK,
Attorney for Clara Perry.

51 [Endorsed:] Supreme court. In the matter of the application of Cornelius L. Haines against the canal-boat Robert W. Parsons. Assignment of errors. Martin Clark, att'y for pl'ff in error.

52 Supreme Court.

In the Matter of the Application of CORNELIUS L. HAINES, Respondent, to Enforce a Lien against the Canal-boat "Robert W. Parsons;" CLARA PERRY, Owner, Appellant. 89941. K. J. P.

Know all men by these presents, that we, Clara Perry, as principal, and American Surety Company of New York, having an office and principal place of business at No. 100 Broadway, in the city of New York, as surety, are held and firmly bound unto Cornelius L. Haines, respondent, above named, in the sum of five hundred dollars ($500) to be paid to the said Cornelius L. Haines, his executors or administrators, to which payment well and truly to be made, we bind ourselves and each of us, jointly and severally and each of our successors, representatives and assigns, firmly by these presents.

Sealed with our seals and dated the 22nd day of August, 1901.

Whereas, the above-named appellant, Clara Perry, has sued out a writ of error to the Supreme Court of the United States to reverse the judgment in the above-entitled cause, entered in the supreme court of the State of New York, on the — day of —— 1901, pursu-

ant to the order or judgment of the court of appeals of the State of New York, being the highest court of law or equity of the said State in which a decision could be had in the said suit,

Now, therefore, the condition of this obligation is such that if the above-named Clara Perry shall prosecute said writ to effect and answer all costs and damages, if she shall fail to make good her plea, then this obligation shall be void; otherwise to remain in full force and virture.

MRS. CLARA PERRY. [L. S.]
AMERICAN SURETY COMPANY OF NEW YORK,
By H. B. ZEVELY, *Vice-President.*
E. F. WATSON, *Attorney.*

[L. S.]
[L. S.]

STATE OF NEW YORK, } ss:
County of Montgomery, }

On this 22nd day of August, 1901, before the subscriber personally appeared Clara Perry to me known and known to me to be the same person described in and who executed the foregoing instrument, and who duly acknowledged to me that she executed the same.

M. WALRATH,
Justice of the Peace.

[L. S.]

53 STATE OF NEW YORK, } ss:
County of New York, }

H. B. Zevely, vice-president of the American Surety Company of New York, being duly sworn, deposes and says that said company is a domestic corporation and a freeholder within said county, in the State of New York, and that it is worth the sum of one thousand dollars ($1000) over and above all its debts and liabilities which it owes or has incurred, and exclusive of property exempt by law from levy and sale under an execution.

H. B. ZEVELY.

Subscribed and sworn to before me, this 27th day of August, 1901

[L. S.]

K. J. PEIRCEY,
Notary Public, Kings Co.

Certificate filed in New York, Queens, Richmond, Westchester, Dutchess, Putnam, Orange, Suffolk, Rockland and Nassau Co's.

54 STATE AND COUNTY OF NEW YORK, ss:

On this 27th day of Aug. 1901, before me personally appeared H. B. Zevely, vice-president of the American Surety Company of New York, to me known, who being by me duly sworn, did depose and say that he resided in the city of New York; that he is the vice-president of the American Surety Company of New York, the corporation described in and which executed the above instrument;

that he knew the corporate seal of said corporation; that the seal affixed to said instrument was such corporate seal; that it was so affixed by order of the board of directors of said corporation, and that he signed his name thereto by like order; and that the liabilities of said corporation do not exceed its assets as ascertained in the manner provided by law. And the said H. B. Zevely further said that he was acquainted with E. F. Watson, and knew him to be one of the attorneys of said corporation, that the signature of said E. F. Watson, subscribed to the said instrument, is in the genuine handwriting of the said E. F. Watson, and was thereto subscribed by the like order of the said board of directors, and in the presence of him the said H. B. Zevely, vice-president.

[L. S.] K. J. PEIRCEY,
Notary Public, Kings Co.

Certificate filed in New York, Queens, Richmond, Westchester, Dutchess, Putnam, Orange, Suffolk, Rockland and Nassau Co's.

At a regular quarterly meeting of the board of trustees of the American Surety Company of New York, held on the 12th day of April, 1893, the following resolution was adopted:

"*Resolved*, That the president and vice-president be and they hereby are, and each one of them is authorized and empowered to execute and deliver, and attach the seal of the company to any and all bonds and undertakings for, or on behalf of the company, in its business of guaranteeing the performance of contracts other than insurance policies, and executing or guaranteeing bonds and undertakings required or permitted in all actions or proceedings by law allowed; such guarantee, bonds and undertakings, however, to be attested in every instance by the secretary, one of the assistant secretaries, or one of the attorneys."

COUNTY OF NEW YORK, *ss:*

I, E. F. Watson, attorney of the American Surety Company of New York, have compared the foregoing resolution with the original thereof, as recorded in the minute book of said company, and do certify that the same is a correct and true transcript therefrom, and of the whole of said original resolution.

Given under my hand and the seal of the company at the city of New York, this 27 day of Aug., 1901.

[L. S.] E. F. WATSON, *Attorney.*

55 STATE OF NEW YORK, *County of New York,* } *ss:*

E. F. Watson, being duly sworn, says: That he is an attorney of the American Surety Company of New York; that said company is a corporation duly created, existing and engaged in business as a surety company under and by virtue of the laws of the State of New York, and has duly complied with all the requirements of the laws of said State applicable to said company, and is duly qualified to act

as surety under such laws. That said company has also duly complied with and is duly qualified to act as surety under the act of Congress of August 13, 1894, entitled "An act relative to recognizances, stipulations, bonds and undertakings and to allow certain corporations to be accepted as surety thereon;" that the within is a true copy of the last statement of the assets and liabilities of said company as rendered pursuant to section 4 of said act of Congress; that said American Surety Company of New York is worth more than $2,500,000 over and above all its debts and liabilities and such exemptions as may be allowed by law.

E. F. WATSON.

Subscribed and sworn before me this 27th day of August, 1901.

K. J. PEIRCEY,

[SEAL.] *Notary Public, Kings Co.*

Certificate filed in New York, Queens, Richmond, Westchester, Dutchess, Putnam, Orange, Suffolk, Rockland & Nassau Co's.

56 The original of the foregoing supersedeas bond was lodged with the clerk of the supreme court, Niagara county in the State of New York on November 29 1901 and the following endorsement made thereon: Bond, filed November 29 1901.

SAMUEL H. PETTIT,
Clerk Supreme Court.

57 [Endorsed:] Supreme Court In the matter of the application of Cornelius L. Haines to enforce a lien against the canal-boat Robert W. Parsons Clara Perry owner Copy Bond on writ of error Martin Clark att'y for pl'ff in error Approved Signed R. W. Peckham associate justice of Supreme Court U. S.

58 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the judges of the supreme court of the State of New York, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Supreme Court before you, or some of you, on a remittitur from the court of appeals of the State of New York, being the highest court of law or equity of the said State in which a decision could be had in the said suit In the matter of the application of Cornelius L. Haines to enforce a lien against the canal-boat "Robert W. Parsons," Clara Perry, owner, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity; or wherein was drawn in question the construction of a clause of the Constitution, or of a treaty, or statute of, or commis-

sion held under the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission; a manifest error hath happened to the great damage of the said Clara Perry, owner of the canal-boat "Robert W. Parsons," as by her complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judg-
59 ment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington, within thirty (30) days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Seal of the Supreme Court of the United States.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 20th day of November, in the year of our Lord one thousand nine hundred and one.

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

Allowed by,

R. W. PECKHAM,
Associate Justice of the Supreme Court of the United States.

60 [Endorsed:] Supreme Court In the matter of the application of Cornelius L. Haines against the canal-boat Robert W. Parsons Writ of error Martin Clark att'y for pl'ff in error No. 91 Erie Co. Sav'gs B'k build., Buffalo N. Y. Niagara county clerk's office, Filed Nov. 29 1901.

61 The original of the foregoing writ of error was lodged with the clerk of the supreme court, Niagara county, in the State of New York, on November 29th, 1901, and also, at the same time and place, a copy thereof for the said defendant, Cornelius L. Haines, the same being addressed personally to the said defendant. The following endorsement was made upon the said original writ and upon the said copy:

Writ of error. Flied November 29th, 1901, at 3 p. m.

SAMUEL H. PETTIT,
Clerk of the Supreme Court, Niagara County, N. Y.

62 Supreme Court.

In the Matter of the Application of CORNELIUS L. HAINES to Enforce a Lien against the Canal-boat "Robert W. Parsons;" CLARA PERRY, Owner.

STATE OF NEW YORK,
County of Erie, City of Buffalo, } *ss:*

Ezra P. Reynolds, being duly sworn, deposes and says that he is upwards of twenty-one years of age, and resides in the city of Buffalo, N. Y.; that on the 23rd day of November, 1901, at the city of Lockport, N. Y., he personally served the annexed citation upon Cornelius L. Haines, above named, by delivering to and leaving with him a true copy thereof; and deponent further says, of his own knowledge he knew the person so served to be the same person mentioned and described in said citation as the defendant in error in this proceeding.

EZRA P. REYNOLDS.

Sworn to before me this 25th day of November, 1901.

[Seal Henry H. Culver, Notary Public, Erie Co., N. Y.]

H. H. CULVER,
Notary Public in and for Erie County, N. Y.

63 UNITED STATES OF AMERICA, *ss:*

To Cornelius L. Haines, Greeting:

You are hereby cited and admonished to be and appear at and before the Supreme Court of the United States, at Washington, within thirty (30) days from the date hereof, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of New York, wherein Clara Perry is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Rufus W. Peckham, associate justice of the Supreme Court of the United States, this 20th day of November, in the year of our Lord one thousand nine hundred and one.

R. W. PECKHAM,
Associate Justice of the Supreme Court of the United States.

64 [Endorsed:] Supreme Court. In the matter of the application of Cornelius L. Haines against the canal-boat Robert W. Parsons. Citation. Martin Clark, att'y for pl'ff in error.

65 *Return to Writ.*

UNITED STATES OF AMERICA,
Supreme Court of New York, } ss:

In obedience to the commands of the within writ, I herewith transmit to the Supreme Court of the United States a duly certified transcript of the complete record and proceedings in the within-entitled case, with all things concerning the same;

In witness whereof, I hereunto subscribe my name and affix the seal of said supreme court, in the city of Lockport, in the county of Niagara, this 29th day of Nov., 1901.

SAMUEL H. PETTIT,
County Clerk of Niagara County and Clerk of the Supreme Court of the State of New York.

Costs of transcript, $1.50, paid by Clara Perry.

[Seal Niagara County.]

SAMUEL H. PETTIT,
Clerk of Supreme Court, State of New York.

Endorsed on cover: File No. 18,337. New York supreme court. Term No. 201. Clara Perry, owner of the canal-boat "Robert W. Parsons," plaintiff in error, *vs.* Cornelius L. Haines. Filed December 2nd, 1901.